UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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**DAVID PASIAK,**

Plaintiff,

-vs-

**ONONDAGA COMMUNITY COLLEGE, KATHLEEN CRABILL and DAVID MURPHY,**

Defendants.

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**COMPLAINT WITH JURY DEMAND**

Civil Action No.: 6:16-cv-1376 (TJM/ATB)

The Plaintiff, DAVID PASIAK, by and through his attorneys, SAUNDERS KAHLER, L.L.P., complaining of the Defendants above-named, as and for his cause of action alleges as follows:

## PARTIES

1. Plaintiff, DAVID PASIAK, (hereinafter "Plaintiff"), is a resident of the County of Oneida and State of New York.

2. Upon information and belief, Defendant Onondaga Community College ("OCC") is operated under a Charter granted by the Regents of the New York State Department of Education, and is conducting business in the County of Onondaga and State of New York. Pursuant to Article 63 of the New York Education Law, Onondaga County is the local sponsor for OCC. To the extent a Notice of Claim is required to be served under New York General Municipal Law 50-e as a precedent to this action, a Notice of Claim was served on or about February 17, 2016, and more than thirty (30) days has elapsed since said service.

3. Upon information and belief, Defendant Kathleen Crabill (hereinafter, "Crabill") is the President of OCC and is a resident of the County of Onondaga and State of New York.

4. Upon information and belief, Defendant David Murphy (hereinafter, "Murphy") is the Senior Vice President of College Affiliated Enterprises & Asset Management and is a resident of the County of Onondaga and State of New York.

## JURISDICTION

5. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

6. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331, 28 U.S.C. 1342(a)(3) and 28 U.S.C. §1367.

7. Venue is proper pursuant to 28 U.S.C. §1391(a) and (b), as, upon information and belief, Defendants do business in the United States District Court of the Northern District of New York, and a substantial portion of the events or omissions giving rise to the claims occurred in said district.

## FACTS

8. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

9. Plaintiff was hired as a men's basketball coach at OCC in 2000, a non-union appointed position.

10. On or about February 18, 2015, Plaintiff was called into a meeting with his direct supervisor, Athletic Director Michael Borsz, his supervisor's direct supervisor, Defendant Murphy and Rebecca Hann, another College administrator. Defendant Murphy advised Plaintiff there were concerns the Men's Basketball program was not "friendly" to minorities and there were not enough minority students in the Men's Basketball program. Defendant Murphy refused to identify the specific concerns or the basis for the alleged perception. In response, Plaintiff

disputed the unfounded allegations of a lack of minority players on the Men's Basketball team and provided his supervisor, Mr. Borsz, with information regarding the greater diversity of the men's basketball program vis-à-vis the other athletic teams at Defendant OCC, the general population in Onondaga County and on the OCC Campus. At a meeting, later in early Spring 2015, Plaintiff was advised by Defendant Murphy, he expected thirty percent (30%) of the upcoming 2015-2016 Men's Basketball team was to be comprised of minority students.

11. In response to the quota mandate made by Defendant Murphy, Plaintiff explained to Defendant Murphy his recruiting philosophy, including, but not limited to, reaching out to coaches, schools and AAU programs throughout the greater Upstate/Central New York Area which could lead to players capable of playing at the collegiate level being a member of the OCC men's basketball program. Plaintiff continued to advise Mr. Borsz and Defendant Murphy that while he had and would continue to actively recruit from schools and AAU teams with a higher minority populations, he would recruit and evaluate prospective players based on numerous factors, including, but not limited to, their athletic/basketball ability, the academic desire to attend a community college and their ability to be a team player and work within the system. Plaintiff advised Defendant Murphy he refused to recruit individuals or place individuals on the team solely based upon their race, as Plaintiff knew this violated Defendant OCC's policies, the National Junior College Athletic Association rules and the law.

12. In June of 2015, Plaintiff received a coaching staff assessment which again indicated, among other matters, he needed to create a "diverse" team. Plaintiff again reiterated his position he would not use race as a stand-alone recruiting criteria.

13. On or about November 20, 2015, Plaintiff received notice he was being placed on paid administrative leave from his coaching position pending an investigation into his "conduct".

Plaintiff was immediately relieved of his duties as Head men's basketball coach.

14. On November 23, 2015, Defendant OCC caused the following statement to be sent to the press/media, including, but not limited to, John O'Brien of the Syracuse Post Standard and Syracuse.com:

> "Onondaga Community College Men's Basketball Coach David Pasiak has been placed on administrative leave with pay pending the results of an investigation by the College into allegations concerning Mr. Pasiak's conduct. Because this is still under investigation and the facts have not yet been established, the College is unable to provide additional details or comment on the situation. Assistant Men's Basketball Coach Johnny Davis has taken over leadership of the Men's Basketball Team until the matter is resolved."

15. The statement released by Defendant OCC was then reported on, and some or all of the statement was republished in online and hard copy media reports, including, but not limited to, CNYCentral.com and Syracuse.com on November 23, 2015.

16. Subsequent to Defendant OCC's publication of the November 23, 2015 statement to the press and republication by various media and news outlets, including, but not limited to, the Syracuse Post Standard and Syracuse.com, Defendant OCC received written communications from no fewer than fifteen (15) individuals concerned with the "conduct" which was being investigated and the fact that Plaintiff had falsely been accused of wrongdoing.

17. Plaintiff was never made aware of the specific allegations regarding his "conduct" subject to the investigation, nor did anyone interview or seek information from him regarding any specific conduct. Plaintiff was not directly made aware of the subject matter of the investigation into his "conduct", and was never advised of the specific allegations being made or the source of the allegations.

18. On or about December 14, 2015, Plaintiff met Defendant Crabill and other

administrators of Defendant OCC. During the meeting, Plaintiff was questioned regarding his recruiting and team selection process, his interactions with minority players, the circumstances surrounding a minority student who had tried out for the basketball team in the fall of 2013 and 2014 and did not make the team, and his philosophy regarding recruiting minority players. Plaintiff was never once advised of the allegations regarding the "conduct" which resulted in his being placed on administrative leave or any investigation being conducted.

19. On or about December 22, 2015, Plaintiff was terminated from his position as Head Men's Basketball coach.

20. On or about December 24, 2015, Defendant OCC caused the following statement to be sent to the press, including, but not limited to, John O'Brien of the Syracuse Post Standard:

> "Onondaga Community College confirms that Johnny Davis will coach the OCC Men's Basketball Team for the remainder of the season. As this is a personnel matter, the College can provide no further details or comment."

21. Plaintiff maintains he was terminated from his job as Head Men's Basketball coach in retaliation for his continual refusal to use race as an independent factor in recruiting decisions and decisions regarding the players who made the basketball team as to do such would, among other matters, violate various federal statutes, OCC's non-discrimination policy and the National Junior College Athletic Association non-discrimination policies, rules and regulations which governed OCC's participation in intercollegiate sports.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS PURSUANT TO 42 U.S.C. §1983 (Equal Protection)**

22. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

23. On or about February 18, 2015, Plaintiff met with Defendant Murphy and Mr.

Borsz and Defendant Murphy advised Plaintiff there were concerns the Men's' Basketball program was not "friendly" to minorities and there were not enough minority students in the Men's' Basketball program.

24. At a meeting later in February or March of 2015, Plaintiff was advised by Defendant Murphy he was to have thirty percent (30%) minority students on the Men's' 2015-2016 Basketball Team.

25. In response to said meetings, Plaintiff explained to the administration his recruiting philosophy, including, but not limited to, reaching out to coaches, schools and AAU programs throughout the greater Upstate/Central New York Area which could lead to any and all players capable of playing at the collegiate level being a member of Defendant OCC Men's' Basketball program.

26. In addition, Plaintiff advised the administration that while he had and would continue to actively recruit from schools and AAU teams with a higher minority populations, he would recruit and evaluate prospective players based on their athletic and academic ability, as well as their ability to be a team player and work within the system, and refused to recruit individuals for or place individuals on the team solely based upon their race.

27. In June of 2015, Plaintiff received a coaching staff assessment which indicated, among other matters, he needed to create a "diverse" team. Plaintiff again reiterated his position regarding using race as a stand-alone recruiting item.

28. On or about November 20, 2015, Plaintiff received notice he was being placed on paid administrative leave from his coaching position pending an investigation into his conduct, although he was never advised of what conduct was being investigated. Plaintiff was immediately relieved of his duties as Head Men's' Basketball Coach.

29. Upon information and belief, at all times relevant to the allegations set forth herein, Defendant OCC employed seventeen (17) head coaches of both men's and women's athletic teams in various sports.

30. At all times relevant to the allegations set forth herein, Defendant Murphy, Mr. Borsz and Defendant Crabill were acting in their capacity as administrators of Defendant OCC and were therefore acting as an agent of and are considered state actors pursuant to 42 U.S.C. §1983.

31. Upon information and belief, pursuant to the College policies, the College prohibits discrimination on the basis of race. In addition, at all times relevant to the allegations set forth herein, Defendant OCC maintained a 2013-2017 Diversity Master Plan which set forth six goals, including, but not limited to, improving recruitment, retention and graduation of students from diverse and/or underserved backgrounds.

32. Nothing in the College policies and/or the Diversity Master Plan addresses, requires or guides the seventeen (17) athletic coaches as to how to implement and/or improve recruitment, retention or graduation of students from diverse and/or underserved populations

33. Upon information and belief, Plaintiff was identically situated to each of the seventeen (17) head coaches and each of the coaches was required to follow the policies of the College.

34. Upon information and belief, Plaintiff was selectively treated differently in the implication and enforcement of the non-discrimination and diversity policies as Plaintiff was the only one of the seventeen (17) coaches who was mandated to create a more diverse team by Defendant OCC through Mr. Borsz, Defendant Murphy and Defendant Crabill, and was the only one of the seventeen (17) coaches to be mandated to maintain a certain quota of minorities on the team. The selective enforcement of the nondiscrimination laws and policies and the diversity

policy was based upon impermissible considerations such as mandating quotas based upon race, and was additionally enforced in bad faith in an attempt to injure Plaintiff. As a result of Plaintiff's failure to abide by the mandates created by the selective enforcement of said policies, Plaintiff was improperly terminated from his position as Men's Basketball Coach.

35. Defendants acted under the color of law with callous disregard of Plaintiff's rights by implementing and enforcing the diversity and non-discrimination laws and policies in an unlawful manner by selectively treating Plaintiff differently than all other coaches at Defendant OCC. Such conduct led Defendant to deny Plaintiff equal protection of the laws and discriminated against him in violation of the Fourteenth Amendment and 42 U.S.C. §1983.

36. As a result of Defendants' violation of the Equal Protection clause and 42 U.S.C. §1983, Plaintiff has suffered damages, including, but not limited to, lost wages, including, but not limited to, front pay and back pay, emotional distress, pain and suffering, punitive damages against Defendant Crabill and Defendant Murphy and attorneys' fees pursuant to 42 U.S.C. §1988.

**AS AND FOR A SECOND CAUSE OF ACTION**
**FOR RETALIATION PURSUANT TO 42 U.S.C. §1983**
**(FIRST AMENDMENT)**

37. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

38. At all times Defendant Crabill, Defendant Murphy and Mr. Borsz were acting under the color of law as employees and agents of Defendant OCC.

39. Upon being directed by Defendant Murphy and Mr. Borsz to create a more diverse basketball team for the 2015-2015 season to be made up of at least thirty percent (30%) minority players, Plaintiff objected and refused to recruit and place individuals on the team using race as a standalone factor due to the fact it violated College policies, various laws and the National Junior

College Athletic Association (hereinafter, "NJCAA") policies.

40. Plaintiff's refusal to recruit student athletes using race as standalone criteria is a matter of public concern, and if Plaintiff not refused to do so, it would have placed the College at jeopardy of violating its own policies, state and federal laws and the NJCAA policies.

41. Plaintiff's objection to recruiting athletes solely based upon race and quotas was constitutionally protected speech and a matter of public concern.

42. As a result of Plaintiff's refusal to recruit athletes solely based upon race and quotas, in violation of the College's policies and the law, Plaintiff was terminated from his position as Head Men's Basketball Coach in violation of his First Amendment rights and 42 U.S.C. §1983.

43. As a result of Defendants' violation of the Plaintiff's First Amendment rights and 42 U.S.C. §1983, Plaintiff has suffered damages, including, but not limited to, lost wages, including, but not limited to, front pay and back pay, emotional distress, pain and suffering, punitive damages against Defendant Crabill and attorneys' fees and 42 U.S.C. §1988.

**AS AND FOR A THIRD CAUSE OF ACTION**
**FOR RETALIATION UNDER 42 U.S.C. §2000d (Title VI)**

44. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

45. Defendant OCC is a recipient of federal funds.

46. Plaintiff opposed the implementation of the mandates of Defendants which required him to discriminate against individuals based upon their race in recruiting and selecting students for the Men's Basketball team by requiring Plaintiff to recruit and select the team using race based criteria and quotas in violation of the law.

47. Defendant OCC, as a recipient of federal funds, retaliated against Plaintiff for opposing an unlawful practice in violation of Title VI of the Civil Rights Act of 1964.

48. As a result of the retaliation by the Defendants, Plaintiff has suffered damages, including, but not limited to, lost wages, including, but not limited to, front pay and back pay, emotional distress, pain and suffering, punitive damages, and attorneys' fees pursuant to 42 U.S.C. §1988.

**AS AND FOR A FOURTH CAUSE OF ACTION**
**FOR RETALIATION UNDER 42 U.S.C. 1981**

49. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

50. When Defendants mandated Plaintiff recruit students for the 2015-2016 Men's Basketball team based solely upon their race and established a quota, Plaintiff refused to do so because his good faith belief that all students, regardless of race, should be free from racial discrimination and illegal quotas in the recruitment and selection of the Men's Basketball team.

51. As a result of Plaintiff's refusal to recruit and/or place players on the team solely based upon race and/or quotas, and opposition to Defendants' unlawful policies and practices, Plaintiff was retaliated against when he was denied equal right to be employed when he was terminated from his employment as the Men's Basketball Coach after being told by Defendant Murphy the 2015-2016 team had to be comprised of thirty percent (30%) minorities and within eight (8) days after Defendant Crabill met with Plaintiff and inquired as to his recruiting methodology and recruiting practices.

52. As a result of the retaliation by the Defendants, Plaintiff has suffered damages, including, but not limited to, lost wages, including, but not limited to, front pay and back pay, emotional distress, pain and suffering, punitive damages against Defendants Crabill and Murphy and attorneys' fees and 42 U.S.C. §1988.

**AS AND FOR A FIFTH CAUSE OF ACTION**
**FOR DEFAMATION**

53. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

54. On November 23, 2015, Defendant OCC caused the following statement to be sent to the press/media, including, but not limited to, John O'Brien of the Syracuse Post Standard and Syracuse.com:

> "Onondaga Community College Men's Basketball Coach David Pasiak has been placed on administrative leave with pay pending the results of an investigation by the College into allegations concerning Mr. Pasiak's conduct. Because this is still under investigation and the facts have not yet been established, the College is unable to provide additional details or comment on the situation. Assistant Men's Basketball Coach Johnny Davis has taken over leadership of the Men's Basketball Team until the matter is resolved."

55. Upon information and belief, the statement regarding an investigation being conducted into Plaintiff's conduct was false as Defendant OCC and Defendant Crabill had already decided to terminate Plaintiff's employment at the time they issued the statement and there was no conduct of Plaintiff which was needed to be investigated.

56. As a result of the publishing of the false statement, Plaintiff was exposed to public contempt, ridicule and disgrace in his profession and suggested unprofessional conduct on his behalf, resulting in suspension, and as a result of the publication and republication, has been unable to obtain employment as a basketball coach.

57. As a result, Plaintiff has suffered damages, including, but not limited to, back pay, pain and suffering and compensatory damages.

**AS AND FOR A SIXTH CAUSE OF ACTION**
**FOR DEFAMATION PER SE**

58. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

59. On November 23, 2015, Defendant OCC caused the following statement to be sent to the press/media, including, but not limited to, John O'Brien of the Syracuse Post Standard and Syracuse.com:

> "Onondaga Community College Men's Basketball Coach David Pasiak has been placed on administrative leave with pay pending the results of an investigation by the College into allegations concerning Mr. Pasiak's conduct. Because this is still under investigation and the facts have not yet been established, the College is unable to provide additional details or comment on the situation. Assistant Men's Basketball Coach Johnny Davis has taken over leadership of the Men's Basketball Team until the matter is resolved."

60. Upon information and belief, the statement regarding an investigation being conducted into Plaintiff's conduct was false as Defendant OCC and Defendant Crabill had already decided to terminate Plaintiff's employment at the time they issued the statement and there was no conduct of Plaintiff which was needed to be investigated.

61. As a result of the intentional publishing of the false statement, Plaintiff was exposed to public contempt, ridicule and disgrace in his profession and suggested unprofessional conduct on his behalf, resulting in suspension, and as a result of the publication and republication, has been unable to obtain employment as a basketball coach.

62. As a result, Plaintiff has suffered damages, including, compensatory and punitive damages in an amount to be determined by a jury.

**AS AND FOR A SEVENTH CAUSE OF ACTION**
**FOR DEFAMATION BY IMPLICATION PER SE**

63. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

64. On November 23, 2015, Defendant OCC caused the following statement to be sent to the press/media, including, but not limited to, John O'Brien of the Syracuse Post Standard and Syracuse.com:

> "Onondaga Community College Men's Basketball Coach David Pasiak has been placed on administrative leave with pay pending the results of an investigation by the College into allegations concerning Mr. Pasiak's conduct. Because this is still under investigation and the facts have not yet been established, the College is unable to provide additional details or comment on the situation. Assistant Men's Basketball Coach Johnny Davis has taken over leadership of the Men's Basketball Team until the matter is resolved."

65. The statements were intentionally, and with malice, published by Defendant OCC to the media regarding the investigation of Plaintiff's alleged conduct, and coupled with the statement there were "allegations" made "concerning Mr. Pasiak's conduct" causing him to be placed on administrative leave during the investigation, implied that Plaintiff had committed acts and conducted himself in a manner where he was incompetent, incapable or unfit to perform his job duties.

66. The statement released to the media by Defendant OCC set forth facts which, by implication, falsely suggested and gave the impression Plaintiff was being suspended immediately and investigated for wrongful conduct.

67. As a result of the publishing of the statement, Plaintiff was exposed to public contempt, ridicule and disgrace in his profession and suggested unprofessional conduct on his behalf, resulting in suspension, and as a result of the publication and republication, has been unable

to obtain employment as a basketball coach.

68. As a result, Plaintiff has suffered damages, including, compensatory and punitive damages in an amount to be determined by a jury.

**JURY DEMAND**

69. Plaintiff repeats and realleges each of the foregoing paragraphs as if set forth more fully herein.

70. Plaintiff hereby demands a trial by jury on all issues.

**WHEREFORE**, Plaintiff prays for an Order and Judgment of the Court:

a. As and for the First Cause of Action against all Defendants for damages, including, but not limited to, lost wages, including, but not limited to, front pay and back pay, emotional distress, pain and suffering, compensatory and punitive damages and attorneys' fees pursuant to 42 U.S.C. §1988.

b. As and for the Second Cause of Action against all Defendants for damages, including, but not limited to, lost wages, including, but not limited to, front pay and back pay, emotional distress, pain and suffering, compensatory and punitive damages and attorneys' fees pursuant to 42 U.S.C. §1988.

c. As and for the Third Cause of Action against Defendants for damages, including, but not limited to, lost wages, including, but not limited to, front pay and back pay, emotional distress, pain and suffering, compensatory and punitive damages and attorneys' fees pursuant to 42 U.S.C. §1988.

d. As and for the Fourth Cause of Action against Defendants for damages including, but not limited to, lost wages, including, but not limited to, front pay and back pay, emotional distress, pain and suffering, compensatory and punitive damages and attorneys' fees pursuant to 42 U.S.C. §1988.

e. As and for the Fifth Cause of Action against Defendants for damages, including, but not limited to, back wages, pain and suffering and compensatory damages.

f. As and for the Sixth Cause of Action against Defendants for damages, including, compensatory and punitive damages in an amount to be determined by a jury.

g. As and for the Seventh Cause of Action against Defendants for damages, including, compensatory and punitive damages in an amount to be determined by a jury.

h. As and for all such causes of action, such other and further relief as the Court deems just and proper.

Dated: November 17, 2016.

MERRITT S. LOCKE, ESQ.
Federal Bar Roll No. 507164
**Saunders Kahler, L.L.P.**
Attorneys for Plaintiff – David Pasiak
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Utica, New York 13501
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mlocke@saunderskahler.com

# VERIFICATION

STATE OF NEW YORK }
} ss.:
COUNTY OF ONEIDA }

DAVID PASIAK, being duly sworn, deposes and says that deponent is the Plaintiff in the within action; that deponent has read the foregoing Complaint With Jury Demand and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

David Pasiak

Subscribed and sworn to before me
this 17th day of November, 2016.

Notary Public

MERRITT S. LOCKE
Notary Public in the State of New York
Appointed in Oneida County
My Commission Expires October 25, 2017